Chin Kah Weng & Ors v Minister of Local Government and Housing, Sabah & Anor

HIGH COURT (KOTA KINABALU) — CIVIL CASE NO BKI-13NCvC-7/9 OF 2016
RAVINTHRAN PARAMAGURU J
13 MARCH 2017

Civil Procedure — Judicial review — Application for — Applicants purchased apartment units from second respondent — Second respondent failed to deliver vacant possession within agreed time — Second respondent argued that Minister vide letter approved their application for extension of time — Whether power to grant extension of time vested in controller or Minister — Whether Minister made decision to extend time — Whether decision of Minister in breach of written law — Whether Minister's decision fell under illegality and procedural impropriety — Housing Development (Control and Licensing) Enactment 1978 s 4(1) — Housing Development (Control and Licensing) Rules 2008 ss 12 & 14

The applicants had purchased apartment units ('the project') from the second respondent between 12 December 2012 and 6 February 2013. Under the sale and purchase agreement ('the agreement'), the second respondent was obliged to deliver vacant possession within 36 months of the date of the signing of the agreement. Nevertheless, the second respondent had failed to comply with the said requirement. Instead, in a letter dated 22 June 2016, the applicants were informed by the second respondent that the first respondent ('the Minister') had vide a letter dated 1 February 2016 ('the said letter'), approved the second respondent's appeal for extension of time of six months to complete the project. Dissatisfied with the decision of the Minister, the applicants filed the present application for judicial review ('the application') and alleged that the extension of time given by the Minister was in breach of the Sabah Housing Development (Control and Licensing) Rules 2008 ('the Rules'). The main ground of the application was that the power to grant an extension of time in the first instance was vested in the controller and not the Minister under the Rules. The issues for consideration were whether the Minister had made the decision to extend time; and whether the decision of the Minister was in breach of written law.

Held,

(1) Assuming that the said letter was the decision of the controller as argued by the Minister, it was completely perplexing and even illogical that the signatory had stated positively that the Minister had approved the extension sought by the second respondent. The note written by the

Minister to the housing engineer to the effect that he had no objection to the extension of six months supported the conclusion that Minister had made the very decision that was so plain and obvious in the said letter. In the premises, the argument that the Minister did not make any decision to grant extension of time to the second respondent was utterly without any merit (see para 17).

(2) If the argument that the Minister could legally direct the controller to give the extension of time was correct, it would mean that ss 12 and 14 of the Rules were rendered otiose and that the two tier structure set up under the said provisions for exemption applications was effectively demolished. This could not be the intention of s 4(1) of the Sabah Housing Development (Control and Licensing) Enactment 1978 ('the Enactment') which only appeared to place the controller under the general supervision of the Minister. Therefore, s 4(1) of the Enactment could not assist the Minister in defending the decision contained in the said letter (see para 19).

(3) The statutory power to grant exemption from complying with the provisions of a housing contract in the first instance lies with the controller as stated in s 12 of the Rules. The act of the Minister in granting extension of time without there being a decision by the controller in the first place was a clear breach of written law, ie ss 12 and 14 of the Rules. The Minister's act therefore fell squarely under the 'illegality' and 'procedural impropriety' grounds upon which an administrative decision may be reviewed. Based on the findings, the court quashed the decision of the Minister in the said letter and grant order in terms for the applicants. The court further ordered the first respondent to pay costs to the applicants in the sum of RM10,000; and the second respondent to pay costs of RM5,000 to the applicants (see paras 20–21).

[Bahasa Malaysia summary

Pemohon-pemohon telah membeli unit-unit pangsapuri ('projek') daripada responden kedua di antara 12 Disember 2012 dan 6 Februari 2013. Di bawah perjanjian jual beli ('perjanjian'), responden kedua bertanggungjawab untuk memberikan milikan kosong dalam masa 36 bulan dari tarikh tandatangan perjanjian tersebut. Walau bagaimanapun, responden kedua telah gagal untuk mematuhi kehendak tersebut. Sebaliknya, di dalam surat bertarikh 22 Jun 2016, pemohon-pemohon dimaklumkan oleh responden kedua bahawa responden pertama ('Menteri') telah melalui surat bertarikh 1 Februari 2016 ('surat tersebut'), meluluskan rayuan responden kedua bagi pelanjutan masa selama enam bulan untuk menyiapkan projek tersebut. Tidak puas hati dengan keputusan Menteri, pemohon-pemohon memfailkan permohonan ini bagi semakan kehakiman ('permohonan') dan mendakwa bahawa pelanjutan masa yang diberikan oleh Menteri telah melanggar Peraturan-Peraturan Pemajuan Perumahan Sabah (Kawalan dan Perlesenan) 2008 ('Peraturan-Peraturan').

Alasan utama permohonan adalah bahawa kuasa untuk memberikan pelanjutan masa pada mulanya adalah diletakhak kepada pengawal dan bukan Menteri di bawah Peraturan-Peraturan. Isu-isu untuk pertimbangan adalah sama ada Menteri telah membuat keputusan untuk melanjutkan masa; dan sama ada keputusan Menteri melanggar undang-undang bertulis.

Diputuskan

(1) Dengan menganggap bahawa surat tersebut adalah keputusan pengawal seperti yang dihujahkan oleh Menteri, ia adalah tersangat membingungkan dan tidak masuk akal bahawa penandatangan telah menyatakan secara positif bahawa Menteri telah meluluskan pelanjutan yang dipohon oleh responden kedua. Nota yang ditulis oleh Menteri kepada jurutera perumahan sehingga dia tidak membantah kepada pelanjutan masa enam bulan menyokong keputusan bahawa Menteri telah membuat keputusan tersebut yang jelas dan nyata di dalam surat tersebut. Berdasarkan ini, hujahan bahawa Menteri tidak membuat apa-apa keputusan untuk memberikan pelanjutan masa kepada responden kedua adalah sama sekali tanpa merit (lihat perenggan 17).

(2) Jika hujahan bahawa Menteri boleh dari segi undang-undang mengarah pengawal untuk memberi pelanjutan masa adalah betul, ia akan bermaksud bahawa ss 12 dan 14 Peraturan-Peraturan menjadi lewah dan struktur dua tingkat yang ditetapkan di bawah peruntukan bagi permohonan pengecualian secara efektif dibubarkan. Ini bukan niat s 4(1) Enakmen Pemajuan Perumahan Sabah (Kawalan dan Perlesenan) 1978 ('Enakmen') yang hanya berbangkit untuk meletakkan pengawal di bawah pengawasan am Menteri. Oleh itu, s 4(1) Enakmen tidak dapat membantu Menteri dalam membela keputusan yang terdapat di dalam surat tersebut (lihat perenggan 19).

(3) Kuasa statutori untuk memberi pengecualian daripada mematuhi peruntukan kontrak perumahan pada mulanya terletak dengan pengawal seperti yang dinyatakan di dalam s 12 Peraturan-Peraturan. Tindakan Menteri dalam memberi pelanjutan masa tanpa terdapat keputusan oleh pengawal pada mulanya adalah jelas melanggar undang-undang bertulis, iaitu ss 12 dan 14 Peraturan-Peraturan. Tindakan Menteri oleh itu terangkum tepat di bawah alasan-alasan 'illegality' dan 'procedural impropriety' di mana keputusan pentadbiran boleh disemak semula. Berdasarkan atas dapatan, mahkamah membatalkan keputusan Menteri dalam surat tersebut dan memberi perintah mengikut terma untuk pemohon-pemohon. Mahkamah selanjutnya memerintah responden pertama untuk membayar kos kepada pemohon-pemohon dalam jumlah RM10,000; dan responden kedua dikehendaki membayar kos sebanyak RM5,000 kepada pemohon-pemohon (lihat perenggan 20–21).]

Notes

For cases on application for judicial review, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5937–5949.

Cases referred to

Ambank (M) Bhd v Menteri Sumber Manusia & Anor and another appeal [2014] 6 MLJ 377; [2014] 1 LNS 686, CA (refd)

Council of Civil Service Unions and others v Minister for the Civil Service [1984] 3 All ER 935; [1985] AC 374, HL (refd)

Legislation referred to

Housing Development (Control and Licensing) Enactment 1978 ss 4(1), 26

Housing Development (Control and Licensing) Rules 2008 ss 12, 12(4), 14

Kong Hong Ming (Lee & Kong) for the applicants.

PK Lim (Mohd Faizal Izuddin with him) (Sabah State Attorney General's Chambers) for the first respondent.

Joan Goh (Goh & Assoc) for the second respondent.

Ravinthran Paramaguru J:

INTRODUCTION

[1] The applicants in this case are purchasers of apartment units in a property project known as Light Residences. The first respondent is the Sabah Minister of Local Government and Housing and the second respondent is the developer of the said project. I shall refer to them as the Minister and the developer respectively. Under the Sabah Housing Development (Control and Licensing) Rules 2008 ('the Housing Rules') the Controller of Housing ('the controller') is empowered to give a waiver in respect of any of the provisions of a contract between a housing developer and the purchaser. The Housing Rules are made under s 26 of the Sabah Housing Development (Control and Licensing) Enactment 1978 ('the Housing Enactment'). The decision of the controller is appealable to the Minister. In this judicial review application, the applicants are challenging a purported decision of the Minister. He had allegedly granted a waiver of the obligation of the developer under the contract clause pertaining to the prescribed completion period. He had extended it by six months. The background facts of this judicial review application are slightly curious. Unlike in most other judicial review applications, the Minister is not defending the propriety or correctness of the impugned decision. Instead, the Minister is contending that he did not make the decision in question at all.

BACKGROUND FACTS

[2] The applicants in question had purchased their respective apartment units from the developer between 12 December 2012 and 6 February 2013. Under cl 1(o) of the First Schedule General Terms of Agreement, the developer was obliged to deliver vacant possession within 36 months of the date of signing of the agreement. However, the developer only obtained the occupation certificate on 1 June 2016 and delivered vacant possession to the applicants on 22 June 2016. By then, the agreed completion date in respect of all the apartment units in question had passed. The total liquidated ascertained damages ('LAD') payable in respect of the 20 apartment units is RM356,365.78. The particulars are set out in the appendix to the statutory statement. I shall pause here to note that the above facts were not disputed by the Minister or the developer. However, the potential claim of the applicants for LAD was frustrated on the same day that they were told to take the keys to their property. In letter dated 22 June 2016, the applicants were informed by the developer for the first time that the Minister had approved the developer's appeal for extension of time of six months to complete the Light Residences. The letter from the Ministry of Local Government and Housing dated 1 February 2016 was extended to the applicants. The applicants have now taken out the instant judicial review proceedings alleging that the extension of time given by the Minister was in breach of the Housing Rules. The principal ground is that the power to grant an extension of time in the first instance is vested in the controller and not the Minister under Housing Rules. The order sought by the applicants is as follows under prayer 1 of the application:

> An Order of Certiorari to remove into this Honourable Court and to quash the decision of the 1st Respondent given in the letter dated the 1st of February 2016 approving an appeal for extension of time of 180 days to the developer to complete the Light Residences at Penampang.

DEFENCE OF MINISTER

[3] In the affidavit in opposition dated 7 December 2016, the Minister denied that the developer had made an appeal to him in their letter dated 15 December 2015 for extension of time under the Housing Rules. Thus, the Minister denied making a decision in the letter of the Ministry of Local Government and Housing dated 1 February 2016. The facts narrated by the Minister in the affidavit in opposition in respect of the events leading to the issuance of the letter dated 1 February 2016 are as follows. The Minister averred that on 16 October 2015, the developer had applied for the said extension from the Permanent Secretary of his Ministry. It is common ground that permanent secretary has also been *gazetted* as the controller of housing. The developer then wrote a second letter dated 15 December 2015 to the Minister appealing for extension of time. The Minister wrote a note (*sila*

bincang) on this letter for the attention of the controller asking him to discuss the matter. The controller referred the letter to the housing engineer (Jurutera Perumahan or JP) for action. The housing engineer recommended that a meeting be held with the District Council and the Drainage and Irrigation Department. For the purpose of the said meeting, the developer submitted a report to justify the extension. The controller wrote the following minute on the report (marked as M5).

JP.1
Sila semak submission dan ambil tindakan lanjut
seperti mesyuarat yang telah ditetapkan..arahan YP MKTP seperti
di atas.

Signed
25/1/16

[4] When the said report ('M5') with above mentioned notation of the controller was passed to the Minister one day before the said meeting, he wrote the following crucial and perhaps decisive note on it. It is addressed to the housing engineer:

Gabriel
Tiada halangan untuk bagi lanjutan 6 bulan lagi.

Signed
D.Hajiji
25/1/16
Datuk Seri Panglima Haji Hajiji Haji Noor
Menteri Kerajaan Tempatan Dan Perumahan Sabah

[5] In para 10.8 of the affidavit in opposition, the Minister averred that subsequently, the Permanent Secretary of his Ministry wrote the letter dated 1 February 2016 to the developer granting the extension of time of 180 days in respect of the delivery period. The Minister further averred that the letter dated 1 February 2016 should read together with the letter of the developer dated 15 December 2015 to him requesting extension of time. Finally, the Minister averred that the decision contained in the letter dated 1 February 2016 was issued by the permanent secretary who is also the controller and that he as the Minister was empowered to give him any direction in respect of the powers of the controller under the Enactment. Thus, to sum up, the Minister had said that it was the controller who made the decision to grant extension of time in the impugned letter dated 1 February 2016.

DEFENCE OF THE DEVELOPER

[6] The defence disclosed in the first affidavit of the developer is markedly different from that of the Minister. This affidavit pre-dates the affidavit of the Minister by one month. In the affidavit in opposition dated 26 October 2016, Tan Chew Peng who is the project manager averred that the developer had made an application via letter dated 16 October 2015 to the controller for extension of time. The justification for the application was that the access road to the Light Residences could not be completed because of opposition from the residents of a neighbouring housing estate known as Taman LT Jaya. Tan Chew Peng further averred that since the developer did not receive a reply to their application dated 16 October 2015, an appeal was made to the Minister via letter dated 15 December 2015 under s 14. In paras 6(h)(v) and (vi), the developer through the affidavit of Tan Chew Peng adopted the position that the Minister had made a decision in the letter dated 1 February 2016 and that it is binding. The relevant paragraphs are as follows:

> (v) the developer further say that the decision of the Minister pursuant to section 14 of the 2008 Rules is final and the same cannot be questioned in any court.
>
> (vi) the developer say further that any extension of time granted is the sole discretion of the first respondent and its relevant Minister.

[7] In the further affidavit dated 14 December 2016, Tan Chew Peng did an about-face and repudiated the averment in the first affidavit that the developer had made an 'appeal' to the Minister. He stated that there was no 'appeal' to the Minister as there was no 'decision' by the controller. Paragraph 6 of the further affidavit captures the U-turn made by Tan Chew Peng:

> In view of what has transpired as deposed in paragraph 9 (all sub-paragraphs included) in the first respondent's affidavit, I say that *there was never an appeal to the Minister* as there *was no decision made by the controller pursuant to the Housing Development (Control And Licensing) Rules*, hence the position of the developer as far as the letter dated 15th December 2016 is immaterial and irrelevant. (Emphasis added.)

[8] For good measure, he also deposed that 'as to how' the developer's application was handled by the Ministry was beyond the former's control and therefore they should be not be prejudiced.

POWER OF CONTROLLER AND MINISTER

[9] Before I proceed to consider the crucial issues in this judicial review application, I shall make brief reference to the Housing Development (Control and Licensing) Rules 2008. It gives the controller the limited power to regulate

and even alter the contractual obligations of private parties under sale and purchase agreements that comes within its ambit. Section 12(4) of the Rules which grants the power to the controller to waive compliance with any provision of the sale and purchase agreement reads as follows:

> 12(4) Where the controller is satisfied that owing to special circumstances or hardship or necessity, compliance with any of the provisions in the contract of sale is impracticable or unnecessary, he may, by a certificate in writing, waive or modify such provisions.
>
> 14 Notwithstanding anything to the contrary in these Rules, any housing developer aggrieved by the decision of the controller under sub-rule 3(2), sub-rule 4(1), sub-rule 5(3), sub-rule 9(2) or sub-rule 12(4) may, within fourteen (14) days after having been notified of the decision of the controller, appeal against such decision to the Minister; and the decision of the Minister made thereon shall be final and shall not be questioned in any court.

[10] It must be noted that under s 12(4), the power to waive or modify compliance with 'any' provision of the contract is in the first instance exercisable only by the controller. The ground stated in s 12(4) upon which the controller may exercise his discretion is 'special circumstances or hardship or necessity'. The 'waiver' must be given by way of a 'certificate in writing'. Only if a housing developer is aggrieved by the decision of the controller, an appeal may be made to the Minister whose decision is final.

ISSUES

[11] In addressing the issues in this case, I shall bear in mind that judicial review is a review of the decision making process of the public authority and is not appeal on the merits of the decision of the public authority. Therefore, the discretion vested by law in the public authority should not be lightly substituted with that of the court unless the discretionary power has been exercised in breach of the applicable law or without regard to principles of natural justice. The commonly accepted grounds to challenge the decision of an administrative authority are illegality, procedural impropriety, irrationality and proportionality (see *Council of Civil Service Unions and others v Minister for the Civil Service* [1984] 3 All ER 935; [1985] AC 374 and *Ambank (M) Bhd v Menteri Sumber Manusia & Anor and another appeal* [2014] 6 MLJ 377; [2014] 1 LNS 686). Before I proceed further, I shall also observe that in the instant case, there is no pleading to the effect that the power conferred under the Housing Rules to the controller and the Minister is ultra vires the Housing Enactment or is otherwise illegal. Thus the main issues would be whether the Minister had made a decision and whether his decision can be challenged under the accepted grounds of judicial review.

[12] The judicial review application is directed against the purported

'decision' of the Minister in the letter of the Ministry of Local Government and Housing dated 1 February 2016. However, the Minister in his affidavit in opposition denied making the decision. He said that it was the controller who made a decision to grant an extension of six months. His counsel submitted that there is no decision by the controller that is 'adverse' to the developer. Therefore, the developer could not have possibly appealed to the Minister under the Housing Rules. It follows that the Minister did not hear any appeal and therefore could not have made any decision under the Housing Rules in the letter dated 1 February 2016. On the other hand, as I have said earlier, the developer affirmed that the Minister had made a decision pursuant to their appeal under s 14 and that his decision in the letter dated 1 February 2016 is final. In the further affidavit in opposition that I averted to earlier, to quote a line from Lewis Carrolls's *Alice in Wonderland*, the position of the developer got 'curiouser and curiouser'. The developer resiled from the position adopted in the first affidavit. Their project manager stated that *no appeal* was made to Minister as the controller *did not* make any decision.

[13] Thus, to all intents and purposes, the developer in the further affidavit seems to say that neither the Minister nor the controller made a decision on their application for extension of time. This averment is ironical and perhaps even farcical because if there is no decision by the Minister or the controller, the developer would be exposed to potential a LAD claim which is what an application for extension of time seeks to defeat. As this is not an issue in this judicial review application and I shall not address it. But to cut through the thicket of conflicting and confusing positions taken by the parties in this application, I shall firstly address the fundamental question whether the Minister had, in point of fact, made the decision found in the letter dated 1 February 2016.

Whether Minister made a decision to extend time?

[14] In arguing that the Minister did not make a decision, his counsel submitted that the letter of the developer dated 15 December 2015 to the Minister was not an 'appeal' within the meaning of s 14 of the Housing Rules as the word 'appeal' was used in a 'loose' sense in the said letter. He also argued that there could not have been a legal 'appeal' as the controller had yet to make a decision when the developer wrote to the Minister on 15 December 2015. He said that an appeal could be made to the Minister only if the controller had made a decision adverse to the developer. I find no merit in the above arguments for the following reasons.

[15] In the first place, the project manager of the developer stated in the affidavit in opposition that the developer appealed to the Minister under the Housing Rules in the letter dated 15 December 2015 because the controller did

not respond to their application. In the second place, whether there could or could not have been a proper appeal to the Minister is beside the point and irrelevant. The purpose of a judicial review application is to challenge an administrative decision or act of a public authority. Assuming that the administrative decision or act was made or done without regard to written law, it can be challenged under the 'illegality' or 'procedural impropriety' grounds. However, it does not necessarily mean that an administrative decision that was made in breach of written law is not a 'decision' and therefore is not amenable to the judicial review process. To hold otherwise would mean that the judicial review process would be completely emasculated with no practical purpose to serve in cases where a public authority had flouted procedure set down by written law. To my mind, the correct approach would be to examine whether the Minister had made any decision without first embarking upon an inquiry whether such a decision is legally 'possible' under the Housing Rules. The starting point for this exercise should be the letter dated 1 February 2016 which is addressed to the developer. For ease of reference, I shall reproduce below the said letter shorn of the letterhead of the Ministry of Local Government and Housing and the reference number:

> 01 Februari 2016
>
> RA Concept Development Sdn Bhd
>
> Lot 23-1, 1st Floor, Riverside Plaza
>
> Block C, Kingfisher Park
>
> *88400 Kota Kinablau*
>
> *PERMOHONAN LANJUTAN MASA PEMBANGUNAN KONDOMINIUM KEDIAMAN CAHAYA (THE LIGHT RESIDENCES)*
>
> Surat permohonan tuan rujukan RACD/KK/10/1607/ec bertarikh 15 Disember 2015 serta mesyuarat pada 26 Januari 2016 untuk perkara tersebut di atas adalah dengan segala hormatnya dirujuk.
>
> 2. Sila ambil maklum bahawa setelah mendengar dan meneliti pembentangan permohonan lanjutan masa oleh pihak tuan, sukacita dimaklumkan bahawa YB Menteri Kerajaan Tempatan dan Perumahan meluluskan lanjutan masa sebanyak 180 hari kepada pihak tuan untuk menyiapkan pembangunan Kondominium Kediaman Cahaya (The Light Residences).
>
> 3. Pihak tuan adalah dinasihatkan untuk memaklumkan keputusan ini kepada semua pembeli-pembeli rumah yang terlibat.
>
> Sekian, terima kasih.
>
> *BERKHIDMAT UNTUK NEGARA DENGAN BERSIH, CEKAP DAN AMANAH*
>
> *(DATUK MATIUS SATOR)*
>
> Setiausaha Tetap/ Pegawai Perumahan

S.k. YB Menteri Kerajaan Tempatan dan Perumahan

Tingkat 6, Block C, Wisma Tun Fuad Stephens

88999 Kota Kinabalu

[16] The following observations may be made about this letter. It is issued with the letterhead of the Ministry of Local Government and Housing. The subject line of the letter is 'Permohonan Lanjutan Masa Pembangunan Kediaman Cahaya (The Light Residences)'. It refers to the letter of the developer dated 15 December 2015 to the Minister. As to the content of the letter, it is couched in simple language. Its meaning is as plain and clear as language can express it. I do not propose to provide a verbatim translation of the letter which is written in the National Language. But I shall paraphrase it here nonetheless. The letter says categorically and without equivocation that the Minister had approved (*luluskan*) the 180 days extension of time sought by the developer. In the penultimate paragraph, it advises the developer to inform all affected purchasers. The letter is signed by Datuk Matius Sator. He did not sign it in his capacity as Controller of Housing but as the Permanent Secretary of the Ministry. It appears that the advice of the Permanent Secretary was heeded. It must be recalled that this letter was the only document given to the applicants in this case by the developer to stifle potential LAD claims.

[17] Assuming that the letter dated 1 February 2016 is the decision of the controller as argued by counsel for the Minister, it is completely perplexing and even illogical that the signatory had stated positively that the Minister had approved the extension sought by the developer. It must be noted that the signatory of the letter, ie Datuk Matius Sator did not file any affidavit to explain the contents of the letter. In fact, the note written by the Minister to the housing engineer to the effect that he had no objection to the extension of six months supports the conclusion that Minister had made the very decision that is so plain and obvious in the letter dated 1 February 2016. In the premises, the argument that the Minister did not make any decision to grant extension of time to the developer is utterly without any merit. For this reason, the alternative argument of counsel for the Minister that the controller should have been joined as a respondent is also without merit.

[18] The final argument of counsel for the Minister in respect of this issue is that even if the Minister had given a direction to the controller to grant extension of time, it was within his powers under s 4(1) of the Housing Enactment that reads as follows:

> 4(1) The Minister shall, by notification in the Gazette, appoint an officer to be the controller of Housing who shall, subject to the direction of the Minister, perform all duties imposed and exercise all powers conferred on the controller by this Enactment.

[19] With respect, I am of the view that the above argument lacks merit for the following reasons. Section 4(1) appears to be a general provision that subjects the controller to the supervision of the Minister in respect of the powers conferred on the controller under the Housing Enactment. However, the power of the controller to grant extension of time is not a power that is granted under the Housing Enactment itself. It is specifically granted under the Housing Rules made under the Enactment. The Housing Rules has clearly provided a two-tier structure in ss 12 and 14 for the purpose of exempting a housing developer from complying with all the conditions of a housing contract. Thus, these are special provisions. The general rule of construction stated in the Latin maxim *specialia generalibus derogant* is that special provisions derogate from general provisions. There is a very good reason to adhere to this rule of construction in the instant case. If the argument of counsel that the Minister can legally direct the controller to give the extension of time is correct, it would mean that ss 12 and 14 of the Housing Rules are rendered otiose and that the two tier structure set up under the said provisions for exemption applications is effectively demolished. To my mind, this cannot be the intention of s 4(1) of the Housing Enactment which only appears to place the controller under the general supervision of the Minister. I therefore find that s 4(1) of the Housing Enactment cannot assist the Minister in defending the decision contained in the letter dated 1 February 2016.

Whether decision of Minister in breach of written law?

[20] In the foregoing passage, I have found as a fact that the decision in the letter dated 1 February 2016 was the decision of the Minister and not that of the controller. The Minister had extended the completion period by six months in this letter. There is no evidence that the controller had made any decision in this case. No decision of the controller was ever furnished to the applicants. In fact, the unsuccessful argument of the Minister was that the letter dated 1 February 2016 constituted the decision of the controller. In the premises, it must be deemed that the controller never made a decision in the instant case under s 12 of the Housing Rules. As correctly submitted by counsel for applicants, the statutory power to grant exemption from complying with the provisions of a housing contract in the first instance lies with the controller. This is stated in unmistakable language in s 12 of the Housing Rules. However, instead of waiting for the decision of the controller, the developer had appealed to the Minister and procured a decision in their favour. In my view, the act of the Minister in granting extension of time without there being a decision by the controller in the first place is a clear breach of written law, ie ss 12 and 14 of the Housing Rules. The Minister's act therefore falls squarely under the 'illegality' and 'procedural impropriety' grounds upon which an administrative decision may be reviewed.

CONCLUSION

[21] I am mindful that counsel for applicants had raised other issues such as the issue that the decision was bad because the applicants were not given a right to be heard and that no material was adduced to prove special circumstances that justify extension of time. However, in view of my finding that the Minister had made the decision contained in the letter dated 1 February 2017 and that it is flawed for non-compliance with written law, I find that the other issues do not fall to be considered. For the foregoing reasons, I shall quash the decision of the Minister in the letter dated 1 February 2016. I shall grant order in terms of prayer 1 of encl 4. The first respondent is ordered to pay costs to the applicants in the sum of RM10,000. The second respondent is ordered to pay costs of RM5,000 to the applicants.

Order accordingly.

Reported by Dzulqarnain Ab Fatar